

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELEON DESHON TATE,

Defendant-Appellant.

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UNPUBLISHED

April 14, 2011

No. 294858

Wayne Circuit Court

LC No. 99-012470-FC

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order that denied his motion to suppress his statement to police. We affirm.

In April 2001, defendant was convicted of felony murder for his role in the shooting death of a drug dealer at the dealer's drug house. Defendant admitted that he accompanied his cousin and two others with the intent to rob the victim. Defendant claimed that he was unaware that anyone was armed. He was nevertheless convicted as an aider and abettor and sentenced to a mandatory life term. Defendant appealed his conviction and sentence in a prior appeal, raising the issues of the voluntariness of his statement to police, the sufficiency of the evidence, and prosecutorial misconduct. This Court found each of defendant's arguments lacking merit. *People v Tate*, unpublished opinion per curiam of the Michigan Court of Appeals, issued March 18, 2003 (Docket No. 237039). The Michigan Supreme Court remanded the case to the circuit court for a determination, either on the existing record or after an appropriate hearing, whether the defendant's typewritten confession was voluntary and therefore admissible under *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965). Under *Lee v Mississippi*, 332 US 742, 92 L Ed 330, 68 S Ct 300 (1948), and *Boles v Stevenson*, 379 US 43, 13 L Ed 2d 109, 85 S Ct 174 (1964), defendant had the right to challenge both the authenticity and the voluntary nature of the typewritten confession. [*People v Tate*, 471 Mich 959; 690 NW2d 702 (2005).] An evidentiary hearing took place on July 13 and July 14, 2005, which culminated in the denial of defendant's motion to dismiss. Because of an irregularity in the proceeding, defendant's request for appointment of counsel was not honored. The trial court entered an order to restart defendant's appeal as of right on September 9, 2009.

A trial court's determination that a defendant's statement made while in police custody was the result of a voluntary, intelligent, and knowing waiver of his Fifth Amendment rights, US Const, Am V, is reviewed de novo on appeal. *People v Gipson*, 287 Mich App 261, 264; 787

NW2d 126 (2010). Thus, we will examine the entire record and make an independent determination regarding the voluntariness of a defendant's statement. However, we review a trial court's factual findings for clear error and will affirm such findings unless we are left with a definite and firm conviction that a mistake was made. *Gipson*, 287 Mich App at 264; *People v Shipley*, 256 Mich App 367, 372-373; 662 NW2d 856 (2003). Special deference is given to the trial court's assessment of the weight of the evidence and the credibility of witnesses. *Gipson*, 287 Mich App at 264; *Shipley*, 256 Mich App at 372-373.

Statements that a defendant makes while in custody are inadmissible unless the prosecutor is able to establish that the defendant knowingly, voluntarily, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Daoud*, 462 Mich 621, 633; 614 NW2d 152 (2000). A defendant's waiver is only voluntary if it is free of intimidation, coercion, or deception; it must be the product of a free and deliberate choice. *Shipley*, 256 Mich App at 373-374. "The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *People v Tierney*, 266 Mich App 687, 708; 703 NW2d 204 (2005) (citation omitted).

In reviewing the totality of the circumstances and giving deference to the trial court's assessment of the weight of the evidence and the credibility of the witnesses, defendant's statement to Investigator Edwards was voluntarily made. Defendant was 20 years old at the time of the interview. He had completed the eleventh grade. By defendant's own admission he had been arrested on at least ten prior occasions. There was no evidence that defendant was deprived of food, sleep, or medical attention. He was not intoxicated. There was no indication that defendant was exposed to repeated or prolonged interrogation.

Defendant claimed that he was never advised of his constitutional rights until after he signed the statement. Defendant also claimed that another officer, Investigator Hughes, slapped him and put his forearm to defendant's neck, demanding that defendant tell him what he knew about the shooting or that Hughes would send him "up state to be someone's bitch." Defendant also claimed that Hughes threatened to arrest everyone in his grandmother's home. Finally, defendant maintained that the officers told him he could leave with his car if he signed a statement. There were discrepancies between defendant's testimony at his initial *Walker* hearing and the one in 2005. At the initial hearing, defendant said nothing about Hughes placing his forearm against his neck. Also at the initial hearing, defendant claimed that his request for an attorney was ignored. At the more recent hearing, defendant admitted he never asked for an attorney.

Hughes denied having any part in defendant's interrogation; rather, Hughes interrogated defendant's co-defendant, Michael Hadley. Thus, the only two witnesses to the interview were defendant and Edwards. Edwards denied each of defendant's accusations. Edwards testified that he was alone with defendant and followed his standard protocol for questioning suspects. Edwards first had defendant read and initial each of his rights on the Advice of Rights form. He then asked defendant if he wanted to make a statement, and defendant responded affirmatively. Edwards typed out a question and then typed defendant's response to each question. This testimony was in stark contrast to defendant's claim that he was not advised of his rights, that the statement had been handwritten, and that he was physically attacked and intimidated. Again, deference is given to the trial court's assessment of the weight of the evidence and the credibility

of witnesses. *Gipson*, 287 Mich App at 264; *Shipley*, 256 Mich App at 372-373. Given defendant's admission that he signed the typewritten statement and the trial court's findings that defendant was not physically attacked or intimidated, the circuit court properly denied defendant's motion to suppress.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Mark J. Cavanagh  
/s/ Cynthia Diane Stephens